



FACSIMILE TRANSMISSION

To: Roy E. Crawford

From: Tim Luke

Idaho Department of Water Resources

1301 N Orchard St

Boise, ID 83706

208-327-7900 (direct) • 208-327-7866 (fax)

Date: June 28, 2000

Re: Water District 34 – Water Delivery above Mackay Reservoir

Attached is a response to your correspondence dated June 27, 2000 sent to our office via facsimile. The water right information that you requested shall be sent to you as an attachment with an original copy of this letter via US mail.

Please advise us if there is any problem with receipt of this fax.

*Faxed 6/28/00
TUL*

**State of Idaho****DEPARTMENT OF WATER RESOURCES****1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098****Phone: (208) 327-7900 FAX: (208) 327-7866****DIRK KEMPTHORNE**
GOVERNOR**KARL J. DREHER**
DIRECTOR

June 28, 2000

Roy E. Crawford
One Market
San Francisco, CA 94105

Re: Water Delivery above Mackay Reservoir

Dear Mr. Crawford,

We have reviewed your letter dated June 27, 2000 that we received via facsimile on the same date. Your letter questions the call of priority rights above the Mackay Reservoir by the watermaster of Water District 34. Your letter suggests that there should be a determination of a futile call with respect to water rights and diversions below the reservoir.

There are several administrative rules and general water right decree provisions that are relevant to your questions. Rule 20.00 of the Department of Water Resources Rules Governing Water Distribution in Water District 34 provides the following direction with respect to delivery of surface water in the basin:

All surface waters of the Big Lost River and its tributaries shall be administered as a single water system, except as provided in Rule Subsections 020.01 through 020.04.

01. Connected River. During the period May 1 through October 15 of each year, from the time the flow at the Howell Gage increases to or exceeds a flow of seven hundred fifty (750) CFS, until the time when the flow recedes to a flow of three hundred (300) CFS or less, all surface waters of the Big Lost River and its tributaries, except as listed in Rule Subsections 020.02 and 020.04, shall be administered as a single water source. At all other times natural flow surface water rights (other than water rights for storage purposes) with a point of diversion upstream from Mackay Reservoir shall be administered separately from the natural flow surface water rights with a point of diversion downstream from Mackay Reservoir.

Rule 20.04 of the Water District 34 Rules provides some guidance regarding futile call for delivery of surface water. It states as follows:

When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water rights, without reasonable waste as determined by the director, the watermaster will not curtail the junior rights in a futile effort to deliver water to the senior rights. The director may consult the Water District

34 advisory board, the Big Lost Irrigation District and other impacted water users when determining whether attempting to deliver senior downstream surface water rights would be futile.

Rule 20.01 of the Water District Rules is based on a similar provision that had been included in the general water right decree for the Big Lost River basin, *Utah Construction Co. v. John F. Abbott, et. al.*, October 21, 1925 (a.k.a. Utah Construction Decree). Water District 34 has delivered water in accordance with Rule 20.01 and the similar Utah Construction Decree provision for many years. Cutting priority rights above the reservoir to deliver earlier rights therefore is not a new or recent water district procedure.

The flow of the Howell gage at 8:30 a.m., June 28 was 373 cfs. The flow appears to have fluctuated between about 340 and 415 cfs over the past several days. This is a drop of about 100 cfs from a week ago. The mean daily flow on June 28 for 89 years of record at the Howell gage is 1040 cfs. The river this year is obviously well below normal and it has been anticipated that priority water rights both above and below the Mackay Reservoir will be cut back more than normal.

With respect to a futile call, the Department is confident that both the Big Lost River and Warm Springs Creek above the reservoir is reaching the Mackay Reservoir and contributing to the natural flow of the river below the reservoir. The average flow at the gaging station below the reservoir for the past several days has been about 540 cfs. Of this total amount, stored water from Mackay Reservoir has contributed more than 200 cfs over the past several days. Department staff measured 265 cfs inflow to the reservoir on June 20. This flow was measured on several different channels of the river immediately upstream of the reservoir. The Department believes that reservoir inflow and regulation of rights above the reservoir at this time provides benefit to senior priority rights both above and below the reservoir.

It is our understanding that the priority cut as determined by the watermaster is about July 21, 1886. All senior water right holders with priorities prior to this date should benefit from regulation. All rights junior to this date should be off, except those rights located on certain tributaries that are decreed as separately administered streams. Warm Springs Creek, the source of water for your rights, is considered a tributary of the Big Lost River and regulated accordingly. Attached to this letter is a listing of water rights by priority with diversions from the Big Lost River located above and below the Mackay Reservoir. A second listing of rights is provided showing water rights on the main stem of the Big Lost River below Mackay Reservoir by priority and by cumulative rate of diversion.

The Water District 34 watermaster believes that the Howell gage flow will likely fall below 300 cfs in a matter of days. When the mean daily flow falls below this level, Warm Springs Creek and the Big Lost River above the reservoir will be administered as a separate source. The watermaster may then deliver additional rights based on available flow and order of priorities in this reach.

We hope this explanation is satisfactory. If you have further questions, please contact Tim Luke or me directly at 208-327-7900, or contact the Water District 34 watermaster, Doug Rosenkrance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Norman C. Young", followed by a small flourish.

Norman C. Young
Administrator, Water Management Division

Cc: Doug Rosenkrance, Watermaster
Eastern Region

Enclosure

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